IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1172 OF 2005

A/W Cri. APPLICATION NO. 1173 OF 2005

Mahadeva Mani s/o Vishvanath

Mani .. Petitioner

V/s

Nikhil Poonamchand Turakhia
& Anr. .. Respondents

Shri S.P. Dalal i/b Dalal & Co. for petitioner
Smt.Nipa S. Gupta with Jayesh Kini for respondent No.1
Shri S.R. Shinde, APP for the State

ALONG WITH
CRIMINAL APPLICATION NO. 1174 OF 2005

Mahadeva Mani s/o Vishvanath

Mani .. Petitioner

V/s

Nikhil Poonamchand Turakhia
& Anr. .. Respondents

Shri S.P. Dalal i/b Dalal & Co. for petitioner
Smt.Nipa S. Gupta with Jayesh Kini for respondent No.1
Shri A.S.Shitole, APP for the State

Coram : V.M. Kanade, J.
Dated : 05/05/2005.

P.C. :-

1 Heard the learned counsel for the petitioner, respondent No.1 and the learned APP for the State.

2 It is submitted that there are no averments in the complaint ,so far as the present petitioner is concerned, stating that he was incharge and responsible for the day to day affairs of the complaint. I have perused the complaint. The contention raised by the petitioner will have to be accepted. The learned counsel appearing on behalf of the respondent No.1 also concedes the said fact. In view of this, the writ petitions are allowed. The process issued against the petitioner/original accused No.4 is quashed and set aside. The trial court however to decide the criminal case in respect of other accused as expeditiously as possibly in any case within 6 months.

3 It is clarified that if any material is found against the present petitioner, liberty is granted to the respondent/complainant to make an application under section 319 of the Code of Criminal Procedure. If such application is made by the respondent, the trial court should consider the same on merits and in accordance with law.

4 It is further clarified that the present petitions are allowed on the ground that no averments are made in the complaint so far as the petitioner is concerned. The other grounds in the petition are kept open.

(V.M. Kanade,J.)